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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
WILLIE ALEXANDER,

Plaintiff,

07 Civ. 9662 (RMB) (DFE)

- against -

MEMORANDUM AND ORDER

[DOCTOR] GALENO (DOCS),
[DOCTOR] PERILLI (DOCS), and
L. MARSHALL, Superintendent,

Defendants.
-----x


DOUGLAS F. EATON, United States Magistrate Judge.

On April 10, 2008, plaintiff moved for appointed counsel. The Court of Appeals for the Second Circuit has held:

When deciding whether to assign counsel to an indigent civil litigant under 28 U.S.C. § 1915(e)(1), we look first to the "likelihood of merit" of the underlying dispute. *Hendricks v. Coughlin*, 114 F.3d 390, 392 (2d Cir. 1997); see also *Cooper v. A. Sargenti Co.*, 877 F.2d 170, 174 (2d Cir. 1989) (*per curiam*). Thus, even though a claim may not be characterized as frivolous, counsel should not be appointed in a case where the merits of the indigent's claim are thin and his chances of prevailing are therefore poor. See *Cooper*, 877 F.2d at 172. Only after an initial finding that a claim is likely one of substance, will we consider secondary factors such as the factual and legal complexity of the case, the ability of the litigant to navigate the legal minefield unassisted, and any other reason why in the particular case appointment of counsel would more probably lead to a just resolution of the dispute. *Hodge v. Police Officers*, 802 F.2d 58, 61-62 (2d Cir. 1986).

Carmona v. U.S. Bureau of Prisons, 243 F.3d 629, 632 (2d Cir. 2001). The Second Circuit has repeated this rule, and every judge in the Second Circuit must follow it. See, e.g., *Perelli v. River Manor Health Care Center*, 323 F.3d 196 (2d Cir. 2003).

At this juncture, I am unable to say that Mr. Alexander's claim is "likely one of substance." Accordingly, I deny his request for appointed counsel. However, he may renew the request if his case survives a motion for summary judgment.



DOUGLAS F. EATON
United States Magistrate Judge
500 Pearl Street, Room 1360
New York, New York 10007
Telephone: (212) 805-6175
Fax: (212) 805-6181

Dated: New York, New York
April 21, 2008

Copies of this Memorandum and Order are being sent by mail to:

Willie Alexander
90-B-3134
Sing Sing Correctional Facility
354 Hunter Street
Ossining, NY 10562

Jeb Harben, Esq.
Assistant Attorney General
State of New York
120 Broadway
New York, NY 10271-0332

Pro Se Office
U.S. District Courthouse
500 Pearl Street, Room 230
New York, NY 10007

Hon. Richard M. Berman